UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JENNIFER HEFLEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:15-CV-01578-ERW
	)	
J&M SECURITIES, LLC, et al.,	)	
	)	
Defendants.	)	

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO STAY THE ENTIRE PROCEEDINGS

Defendants J&M Securities, LLC and Shannon Metzger's Motion to Stay should be denied because is premature and, more importantly, it ignores that Plaintiff seeks relief for three separate causes of action in this case (Count I – Fair Debt Collection Practices Act, Count II – Wrongful Garnishment, and Count III – Abuse of Process). Defendants' Motion is premised on the hope that the Supreme Court of Missouri will (a) grant transfer, and then (b) reverse itself on the issue of whether post-judgment interest under Missouri law automatically and silently attaches to a judgment. The issue of post-judgment interest, however, bears on a single allegation under Plaintiff's FDCPA claim only. Defendants have not, and cannot, demonstrate that a potential change in the law as to a single element of a single cause of action warrants a stay of the entire proceedings.

"The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Boswell v. Panera Bread Co.*, 311 F.R.D. 515, 526 (E.D. Mo. 2015)) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). "How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Id.*

(citing *Landis*, 299 U.S. at 254–55. "Thus, in considering a motion to stay, the Court weighs the potential prejudice or hardship to the parties, as well as the interest of judicial economy." *Id.* (denying the defendant's motion to stay the proceedings where the basis for the stay was premised on waiting the result of a pending Supreme Court decision).

Here, Defendants' stated justification for the Motion to Stay is the "pending" issue of post-judgment in the matter of *Dennis v. Riezman Berger, P.C.*, No. ED 103904. On October 26, 2016, the Court of Appeals denied Respondent's Motion for Rehearing and Application for Transfer to the Supreme Court. Importantly, the *Dennis* appeal has been pending since January 9, 2016. Defendants did not ask this Court to stay this proceeding until nearly a year later. In the interim, Defendants filed a Motion to Dismiss, prepared two separate Answers and Affirmative Defenses, submitted a Joint Scheduling Plan, attended a Rule 16 Conference, engaged in discovery and served initial disclosures, among other actions. Curiously, it was not until the *Dennis* Court issued its decision – in favor of Plaintiff's position - that Defendants, for the first time, found it necessary to stay this action. Defendants' new-found appreciation for judicial economy is no accident. As is readily apparent, Defendants Motion to Stay is based far less upon economy and more on self-preservation. Plaintiff questions whether Defendants would be asking for a stay if the *Dennis* Court reached the opposite result.

Setting aside the suspect timing of Defendants' Motion, the underlying reasoning for the requested stay does not possess any merit. Within their Motion to Stay, Defendants point to two purported reasons: (1) Defendants argue that they should not be forced to respond to any additional discovery relating to their unlawful assessment of post-judgment interest given that those responses may become moot by virtue of the *Dennis* appeal; and (2) Defendants note that

Plaintiff may file a motion for summary judgment on the issue before the *Dennis* appeal is complete.

First, with respect to discovery, Defendants ignore that Plaintiff does not need to conduct any further discovery relating to Defendants' unlawful assessment of post-judgment interest; the facts relevant to that allegation are immediately provable from the face of available court records. Therefore, contrary to Defendants' protestations, there is no risk of responding to unnecessary discovery requests while awaiting the completion of the *Dennis* appeal. Plaintiff *does* need to conduct further discovery on the remaining bases of Defendants' liability. Specifically, in her First Amended Complaint, Plaintiff pleads that Defendants continued to knowingly garnish her wages in violation of the Bankruptcy Court's automatic stay, that Defendants refused to credit all of the payments they previously garnished from her, and that Defendants otherwise lacked standing to take action against Plaintiff. Therefore, the only potential discovery requests will relate to legal issues separate and apart from Plaintiff's single allegation of post-judgment interest.

Second, Defendants request to stay this entire proceeding on the potential that Plaintiff may file a summary judgment motion is premature. This Court entered its Case Management Order setting the deadline for dispositive motions months from now, on or before March 17, 2017. *If* Plaintiff files a motion on or before that date arising out of Defendants' unlawful collection of unawarded post-judgment interest and *if* the *Dennis* appeal is still not complete, Defendants' argument would arguably possess some merit at that time. The *Dennis* appeal will still be pending only *if* the respondents in that case timely file an application with the Missouri Supreme Court (probable), *if* the Missouri Supreme Courts grants transfer (improbable), and *if* the Missouri Supreme Court reverses the decision of the Court of Appeals (unlikely). At this point, the possibility of these many assumptions all coming true does not outweigh the interest of Plaintiff in pursing her several claims. Should Plaintiff file a dispositive motion under those circumstances, Defendants are free to file their Motion to Stay and raise their arguments at the appropriate time.

Because Plaintiff will still need to engage in discovery relating to her other claims *regardless* of the ultimate outcome of the *Dennis* appeal on the unrelated issue of post-judgment interest, the entire basis of Defendants' Motion to Dismiss lacks any factual or legal support. Therefore, Plaintiff respectfully requests this Honorable Court deny Defendants opportunistic Motion to Stay and enter all other and further relief in Plaintiff's favor that the Court deems proper.

BRODY & CORNWELL

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CERTIFICATE OF SERVICE

The undersigned attests that, on October 26, 2016, the foregoing document was served by operation of the Court's electronic filing system on the following counsel of record:

Talmage E. Newton, IV
Newton Barth, L.L.P.
Attorney for Defendants

/s/ Bryan E. Brody